

AMENDMENTS TO THE DRAWINGS

Appended hereto as attachments are two replacement formal drawing sheets to replace sheets 1 and 4 of the drawings that were originally included in the application as filed. The replacement sheets show an added reference numeral 31 to Fig. 1 (referred to in specification paragraph [0021]) and correction of reference numeral 32 to 82 in Fig. 5. The latter figure also includes a redirected lead line for reference numeral 94.

Also appended hereto are copies of originally-filed drawing sheets 1 and 4 showing in red the drawing changes that are reflected in the attached replacement drawing sheets.

Approval of the drawing changes shown and acceptance of the enclosed replacement drawing sheets incorporating those changes is respectfully requested.

REMARKS

At the outset, applicant's attorney acknowledges with appreciation the allowance of claim 3.

In addition to the amendments to the drawings, identified on page 7 hereof, new claims 14 through 18 have been added.

Claims 1 through 13 were rejected as anticipated by the Eeftink '345 reference. In that regard, the Eeftink reference discloses an eaves trough or gutter hangar that is installed on the outer side of a gutter, not a bracket for positioning in a gutter as recited in claim 1. The Eeftink reference also does not disclose a bracket that includes a vertically oriented first leg that includes a mounting surface adapted to contact a rear wall of a gutter, as claimed in claim 1, but, instead, discloses a base plate or strap 4 that does not contact the gutter – only arcuate strap of hangar 9 contacts the gutter 11 and it includes an inner end 10 that spaces strap 4 from gutter 11. And the Eeftink reference also does not include a second bore in a second leg for receiving a cover fastener for securing a front edge of the gutter cover to the bracket, as recited in claim 1. Indeed, the Eeftink reference does not disclose a gutter cover at all, and therefore there is not even a need in the Eeftink structure for such an element.

With regard to claim recitations that might be considered to be functional rather than structural, such functional recitations must be given effect in assessing the patentability of a claimed invention. As was stated by the Board of Patent Appeals,

Although we have sustained several of the Examiner's rejections we here wish to specifically note that contrary to the Examiner's assertions, functional language in the claims must be given full weight and may not be disregarded in evaluating the patentability of the subject matter defined employing such functional language. However, the applicant must

establish that what is taught by the reference does not inherently function in the same manner required by the claim; cf. *In re Hallman* decided by the CCPA July 16, 1981, 655 F.2d 212, 210 U.S.P.Q. 609. *Ex parte Bylund*, 217 U.S.P.Q. 492, 498 (Bd. App. 1981).

And the Federal Circuit relatively recently held to the same effect. *K2 Corp. v. Salomon S.A.*, 52 U.S.P.Q.2d 1001, 1004 (Fed. Cir. 1999) ("The functional language is, of course, an additional limitation in the claim."). In the present instance, what is taught by the reference does not inherently function in the same way as does the device set forth in the claim, because the Eeftink patent does not disclose a bracket that is for use within a rain gutter that includes an overlying gutter cover – it is for use outside a gutter, and one that does not include a cover. Nor does the reference disclose a bracket that has a first, vertical leg that includes a mounting surface that is adapted to contact the rear wall of a gutter. In fact, as noted above, vertical leg 4 of the Eeftink structure does not contact gutter 9 at all. Finally, because the Eeftink reference does not disclose a gutter cover, it does not show a support means carried by the first leg 4 for engaging a rear portion of a gutter cover.

In view of the several significant structural and functional differences identified above between the claimed bracket structure and the arrangement disclosed in the Eeftink reference, the invention as claimed in claim 1 is not anticipated by that reference. Those differences also are such that the Eeftink reference does not render obvious the structure claimed in claim 1. Thus it is respectfully urged that claim 1 recites an invention that is clearly patentably distinguishable over the hangar structure disclosed in the Eeftink reference.

Claims 2 and 4 through 13 each depend from claim 1, either directly or indirectly, and therefore those claims are also not anticipated and not rendered

obvious by the structure disclosed in the Eeftink reference, and for the same reasons as are given above in connection with claim 1. Moreover, each of the dependent claims contains additional recitations that further distinguishes the invention so claimed from the structure disclosed by Eeftink

New claims 14 through 18 are also patentably distinguishable over the Eeftink reference. With regard to claim 14, which recites that the second leg is fixedly connected with the first leg, the Eeftink reference shows a pivotable connection between hangar 9 and base plate 4. In that regard, the Eeftink reference discloses that base plate 4 includes knuckles 6 and hangar 9 includes an inner end knuckle 10, the knuckles being interconnected for pivotal movement of the respective connected elements by virtue of pintle 8 that passes through the knuckles.

Claim 15 recites a contact surface (element 48) that is carried by the second leg (element 14) between the first leg (element 12) and the gutter front wall engagement means (element 58) for contact with the gutter cover outer end panel (element 88). The Eeftink reference neither shows nor suggests such a contact surface because it does not disclose a gutter cover.

Claim 16 depends from claim 15 and further recites a second bore for receiving a cover fastener and claim 17 depends from claim 16 and recites a blind bore.

Claim 18 depends from claim 15 and includes a stop (element 52) for engagement with an edge of the gutter cover outer end panel (element 88). Again, the Eeftink reference neither shows nor suggests such a stop because it does not disclose a gutter cover.

Finally, the Irwin reference that was cited by the examiner, but not applied, also does not show a gutter cover, nor does it show or suggest the structural and functional features that are recited in the claims.

Based upon the foregoing amendments and remarks, the specification, drawings, and claims as they now stand in the application are believed clearly to be in allowable form. The claims patentably distinguish over the disclosures contained in the references that were cited by the examiner, whether those references be considered alone or in combination, and whether they be considered in the context of 35 U.S.C. § 102 or of 35 U.S.C. § 103. Consequently, this application is believed now to be in condition for allowance. Accordingly, reconsideration and reexamination of the application is respectfully requested with a view toward the issuance of an early Notice of Allowance.

The examiner is cordially invited to telephone the undersigned attorney if this amendment raises any questions, so that any such question can be quickly resolved in order that the present application can proceed toward allowance.

Respectfully submitted,



Alfred J. Mangels
Reg. No. 22,805
4729 Cornell Road
Cincinnati, Ohio 45241
Tel.: (513) 469-0470

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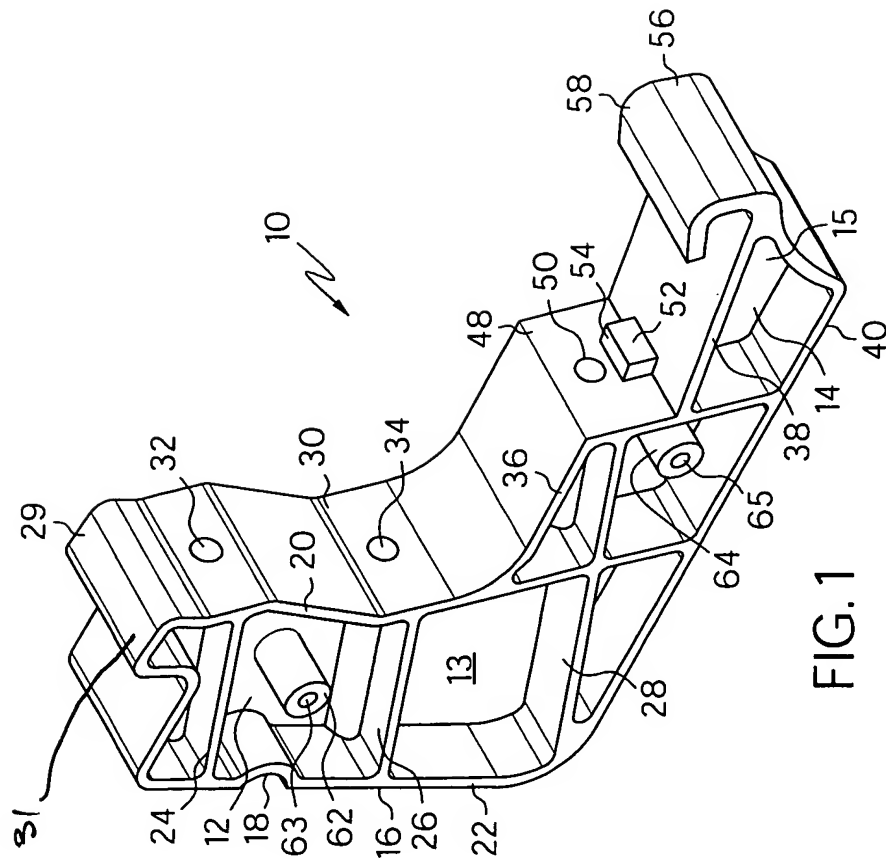


FIG. 1

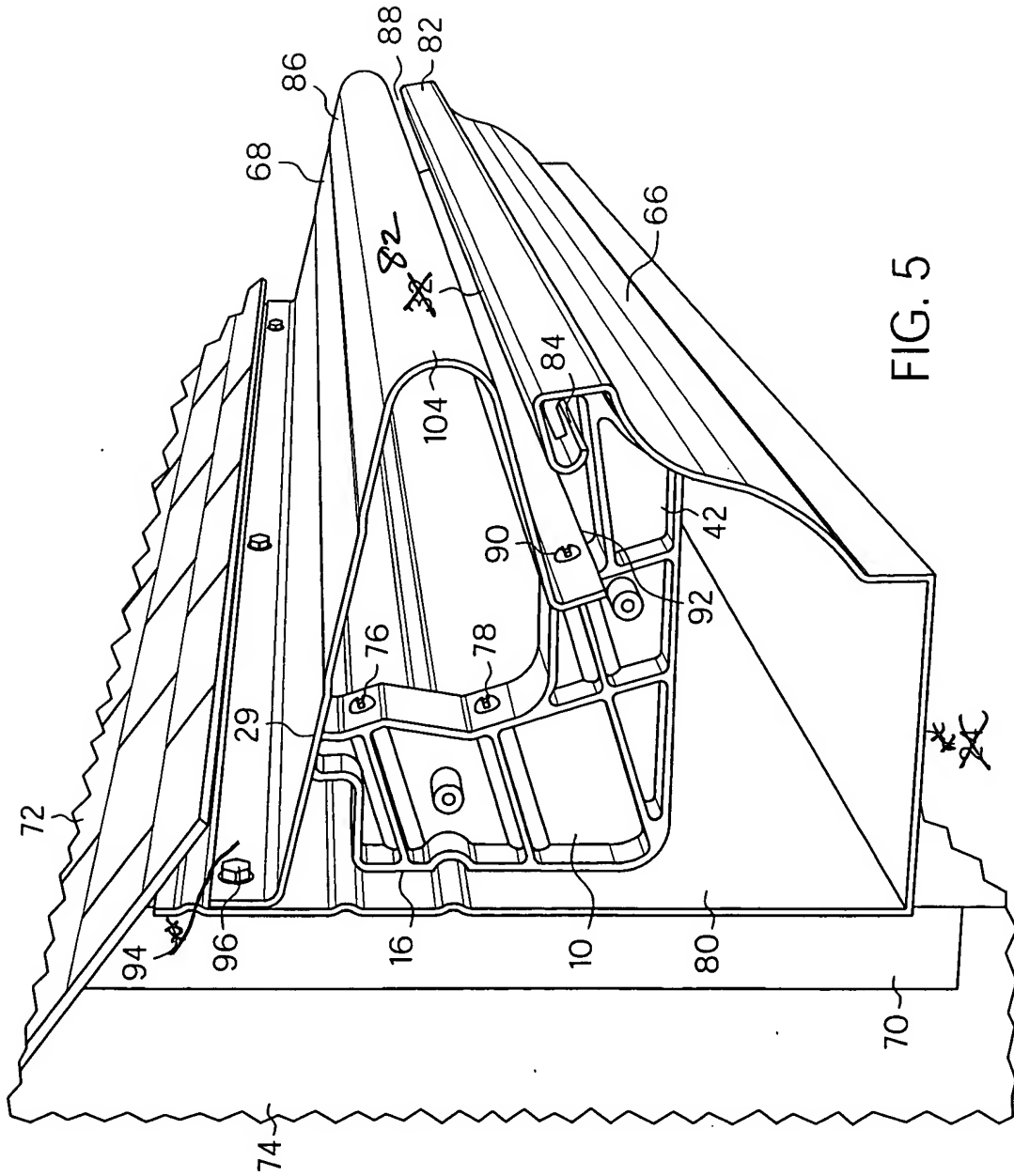


FIG. 5